



Board of Adjustment
PO Box 120
Town of Fremont, New Hampshire 03044
Minutes of September 30, 2008
Approved October 29, 2008

Members present: Chairman Doug Andrew, Members Jack Baker, John (Jack) Downing, Scott Boisvert and Alt/recording Secretary Meredith Bolduc.

Mr. Andrew called the meeting to order at 8:06 p.m. and called the roll.

MINUTES

Mr. Baker made the motion to accept the minutes of the August 26, 2008 meeting as written.

Motion seconded by Mr. Downing with unanimous favorable vote except for Mr. Boisvert who abstained as he was not present at that meeting.

Mr. Andrew appointed Mrs. Bolduc as an alternate to the Board for this evening, taking the place of absent Member Aaron Epstein.

Mrs. Bolduc reported that she received a phone message from Frank Bettencourt, Jr. who is the applicant for the case to be heard at 7:30 pm saying that he was unavoidably detained in traffic, but would be here. The Members agreed to move forward with the case that was scheduled for 8:00 pm and hear Mr. Bettencourt's case after that was finished.

Case #08-005
Philip B. Fogarty
MAP 7 LOT 098

Present: Applicant Kevin Fogarty, David Fogarty, representing Attorney Scott LaPointe, Abutter Robert O'Shea, Tracy Abbott and Realtor Pat Mulcahey.

Mr. Andrew opened this Public Hearing at 8:08 p.m. and stated that this is a continuation of the August 26, 2008 portion of this Public Hearing which was continued to allow time for a site visit of the property.

Mr. Andrew stated that he and Mr. Downing met at the site for a site visit. He reported that they

viewed the placement of the house as shown marked out with stakes.

The Board reviewed the "work drawing 1107" of the property drawn by Surveyor Peter Landry, dated August 2008, which showed the entire .14 acre (50' x 120') parcel with the locations of all abutting properties. This was the same drawing submitted at the August 26, 2008 portion of this Public Hearing. It also showed the locations of the proposed well, proposed septic area, and the proposed 24' x 44' dwelling which would be as close as 13' to the northerly sideline adjacent to the property at Map 7 Lot 097 and 13' to the southerly sideline adjacent to another parcel within Map 7 Lot 098. The drawing also showed the existing well, well radius, dwelling, septic system and garage on the other parcels of Map 7 Lot 098.

There was some discussion relative to the total amount of footage of the Variance request and a possibility of decreasing the size of the home on the lot. Mrs. Bolduc suggested reducing the 24' width of the proposed building to 20' and locating it 2' further toward the south to give as much as 18' from Mr. O'Shea's property (Map 7 Lot 097). The Variance request for the northerly lot line setback that is adjacent to Mr. O'Shea's property would be reduced from 7' to 2', and increased on the southerly lot line by 1', from 7' to 8'. This prompted some discussion relative to both lot line setback distances. Mr. Fogarty stated that he is proposing a single story house and that he would really like to stick with the 24' width.

Mr. Andrew asked if there was any abutter comment. Mr. O'Shea stated that the area is already congested and he would like to see no house built on the lot. He requested that the ZBA uphold the zoning and deny the application.

Mrs. deBeer said that she was speaking as a Fremont resident and that she does not like to see the ordinance changed especially on an already small lot and suggested a two story building with a smaller footprint. Mr. Fogarty said that he could consider a two story building if the width of the footprint were required to be much smaller than 24'. Mrs. Bolduc said that granting a variance is not changing the ordinance. She explained that the ZBA is in place to afford a property owner some flexibility to the strict interpretation of the zoning, but cannot actually change the zoning or the ordinance.

There was some discussion relative to the removal or size reduction of a deck that is on the building on the lot adjacent to the southerly portion of this lot.

There was some discussion relative to the four separate parcels that are on the deed. Mrs. Bolduc noted that at the August 26, 2008 portion of this Public Hearing Attorney LaPointe said that they are planning to do a voluntary lot line merger of the other three lots and would not object to the voluntary lot merger as a condition of approval. Mr. LaPointe affirmed that is still the case. There was also a discussion relative to a possible lot line adjustment and it was noted that a non-conforming lot cannot be made to be more non-conforming, which is what the outcome of a lot line adjustment would do in this case due to the size of the parcels involved.

There was further discussion relative to the set back requests. It was agreed that this is a particularly small pre-existing lot in an area of similar non-conforming lots and a Variance would be necessary to allow reasonable development. The Board and Mr. Fogarty agreed that a fair compromise would be to reduce the 24' width of the building to 21' and move the footprint 1' to the south. This would modify

the Variance request from 7' to 3' on the northerly side of the lot (to allow a setback of 17') and from 7' to 8' on the southerly side of the lot (to allow a setback of 12'). With that in mind, and with little more discussion, the five conditions of an Area Variance were addressed by the applicant and voted by the Board. The applicant's answers as submitted with the application are shown in italics. Mr. Andrew read the five conditions as follows:

1. The proposed use would not diminish surrounding property values because: *The lot is a pre-existing lot and is in a development of undersized lots with many buildings built closely together and not strictly meeting all setback requirements. To grant relief of a sideline setback in this case would allow a structure which is in keeping with the general neighborhood and thus could not reasonably be considered to diminish surrounding property values.*

Board vote:

Mr. Andrew	Yes
Mr. Boisvert	Yes
Mr. Downing	Yes
Mr. Baker	Yes
Mrs. Bolduc	Yes

By virtue of the vote the Board unanimously agreed with the applicant's rational.

2. Granting the variance would not be contrary to the public interest because: *The granting of the variance in this case would not be contrary to the public interest as the public interest does encourage reasonable use of land. The zoning ordinance from which relief is sought would seem to be most applicable for lots created under the present zoning which would comfortably allow for all of the setbacks to be met.*

Board vote:

Mr. Andrew	Yes
Mr. Boisvert	Yes
Mr. Downing	Yes
Mr. Baker	Yes
Mrs. Bolduc	Yes

By virtue of the vote the Board unanimously agreed with the applicant's rational.

3. Denial of the variance would result in unnecessary hardship to the owner because: Special conditions exist such that literal enforcement of the ordinance results in unnecessary hardship as:

a. the following special conditions of the property make an area variance necessary in order to allow the development as designed: *the special condition of this property is that it is a non-conforming lot in a development of small lots. No reasonable development could occur on the lot if the applicant was required to strictly meet any and all setback requirements.*

Board vote:

Mr. Andrew	Yes
Mr. Boisvert	No
Mr. Downing	Yes
Mr. Baker	Yes
Mrs. Bolduc	Yes

By virtue of the vote the Board collectively agreed with the applicant's rational 4-1.

b. the benefit sought cannot be achieved by some other method reasonably feasible to pursue, other than an area variance; *the benefit sought which is building a modest home upon the site cannot be reasonable pursued without the variance as it would not be economically reasonable to build a home which was compelled to meet all side line setbacks.*

Board vote:

Mr. Andrew	Yes
Mr. Boisvert	Yes
Mr. Downing	Yes
Mr. Baker	Yes
Mrs. Bolduc	Yes

By virtue of the vote the Board unanimously agreed with the applicant's rational.

4. Granting the variance would do substantial justice because: *the neighborhood in which the parcel is located is densely built with non-conforming lots, and to allow the variance would only allow a pre-existing lot which predates the ordinance to be reasonably and economically utilized. The ordinance Article IV Section 1 was not designed to preclude reasonable development of pre-existing lots.*

Board vote:

Mr. Andrew	Yes
Mr. Boisvert	Yes
Mr. Downing	Yes
Mr. Baker	Yes
Mrs. Bolduc	Yes

By virtue of the vote the Board unanimously agreed with the applicant's rational.

5. The use is not contrary to the spirit of the ordinance; *the requested use would be neither dangerous nor hazardous to any abutters.*

Board vote:

Mr. Andrew	Yes
Mr. Boisvert	Yes
Mr. Downing	Yes
Mr. Baker	Yes
Mrs. Bolduc	Yes

By virtue of the vote the Board unanimously agreed with the applicant's rational.

Mr. Boisvert made the motion that, based on the information and plan presented and as the result of the Boards vote on the five conditions of an Area Variance, the Fremont Zoning Board of Adjustment grant an Area Variance from the terms of Article IV Section 1 of the Town of Fremont Zoning Ordinance to PF Nominee Trust, Philip Fogarty, Trustee, for property located at 16 Beach Street, Fremont, New Hampshire, Map 7 Lot 098; (formerly and also known as parcel 92 of the Duston's Shores January 1957 plan #III recorded at the Rockingham Registry of Deeds as plan 02331) to allow the construction of a twenty one (21) foot x forty two (42) foot residential structure closer than twenty (20) feet from the northerly sideline setback and the southerly sideline setback, pursuant to the plan submitted as "work drawing 1107" of the property that was drawn by Surveyor Peter Landry, dated August 2008; and with the following conditions.

1. That no portion of any structure be built and/or located closer than twelve (12) feet to the southerly sideline, adjacent to the lot that is within the deed of Map 7 Lot 098, formerly and also known parcel 93 of the Duston's Shores January 1957 plan #III recorded at the Rockingham Registry of Deeds as plan 02331.
2. That no portion of any structure be built and/or located closer than seventeen (17) feet to the northerly sideline, adjacent to Map 7 Lot 097.
3. That within sixty (60) days of this approval the owner complete and record a Voluntary Lot Merger of the parcels known as parcels 93, 94, and 95 as described in the deed of Map 7 Lot 098 that is recorded at Book 4896 Page 2395 at the Rockingham County Registry of Deeds and of the Duston's Shores January 1957 plan #III recorded at the Rockingham Registry of Deeds as plan 02331.

Motion seconded by Mr. Baker with unanimous favorable vote.

The applicant was instructed that there is a 30 day appeal period and that this decision will be recorded at the Rockingham Registrar of Deeds. The applicant agreed to remit payment for all recording fees.

At 9:10 pm Mrs. Bolduc made the motion to close this Public Hearing.

Motion seconded by Mr. Boisvert with unanimous favorable vote.

Case # 08-004
Frank C. Bettencourt, Jr.
Under Power of Attorney for Susan Boyd,
Executrix of the Estate of Frank C.
Bettencourt, Sr.
Exeter River Camping Area
MAP 2 LOT 029

Present: Applicant Frank C. Bettencourt Jr. Under Power of Attorney for Susan Boyd, Executrix of the Estate of Frank C. Bettencourt, Sr., Conservation Commission Member Pat deBeer, abutter Ken Brown, Tracy Abbott, Realtor Pat Mulcahey.

Mr. Andrew opened this Public Hearing at 9:13 p.m. and stated that this is a continuation of the August 26, 2008 portion of this Public Hearing which was continued to allow time for a site visit of the property. Mr. Andrew stated that all certified returns of the notice of the Public Hearing have now been received.

Mr. Andrew reported that he met with Mr. Bettencourt at the site September 6, 2008 at 13 Clough Crossing for the purpose of a site visit. Mr. Downing had already walked the site. Also in attendance were Conservation Commission Chairman Jack Karcz and Member Pat deBeer. Mr. Andrew reported that they viewed the campground sites and buildings on the property.

Mr. Andrew stated that the Board Town Counsel has advised that this application cannot be considered by the ZBA under Article III Section 1-D.2 of the Fremont Zoning Ordinance as it is

beyond the jurisdiction of the Board since the time period to permit the property to continue the non-conforming use had expired prior to the submission of the application, but that it would be considered as a Use Variance requesting relief to re-establish a lapsed non-conforming use under whatever part of the Ordinance establishes the uses in the zone where the property is located. The same application could be used. The subject property, Map 2 Lot 029, is located in the Flexible Use Residential District and the Wetland and Watershed Protection District, thus the variance relief request should be from Article IX Section E to re-establish the lapsed non-conforming use of the Exeter River Camping Area as a permitted use in the Wetland and Watershed Protection District; and Article XVIII Section 4.1.1 to re-establish the lapsed non-conforming use of the Exeter River Camping Area in the Flexible Use District without a the required Conditional Use Permit.

Mr. Andrew reported that the Board received a September 19, 2008 correspondence from Mr. Bettencourt requesting reconsideration and/or rehearing on his application for a Use Variance from the terms of Article III Section 1-D.2 to allow a one year extension of time to resume the operation of the Exeter River Camping Area. As a point of order, Mr. Andrew stated that the Board must first act to deny or grant the application before a request for rehearing can be considered.

Mr. Andrew told Mr. Bettencourt that the Board sympathizes with the estate problems, but has been advised that as matter of law, Article III Section 1-D.2 operates such as to return the property to the permitted use in that zone as the nonconforming use lapsed prior to the submission of the application rendering the request beyond the jurisdiction of the Board. For the sake of moving on with the case, the Board is willing to treat the application as a Use Variance from the permitted use section in the Flexible Use District Ordinance (Article XVIII Section 4.1.1) and the Wetland and Watershed Protection District Ordinance (Article IX Section E) as an accommodation to you as the applicant such that you would not have to start the ZBA application process all over again. It is your choice as to whether you want to proceed under that accommodation.

Mr. Bettencourt agreed to change his request from Article III Section 1-D.2 to Article IX Section E and Article XVIII Section 4.1.1. The Article and Section numbers on the application were changed and initialed by Mr. Bettencourt.

Mrs. Bolduc read Article IX Section E (Wetland and Watershed Protection District) and Article XVIII Section 4.1.1 (Zoning District).

The Board again reviewed a copy of a plan submitted which showed the entire 6.19 acre parcel with the locations of all abutting properties.

Mrs. deBeer reminded the Board that the Conservation Commission did make comments on this case and she would like the ZBA to consider that this property is in the Aquifer Protection District where the zoning is 3 acres. She added that the Exeter River runs through the property which makes it of significance and it is the source of drinking water for part of the Town of Exeter. Mrs. deBeer said that and the river is very important to this decision and the campground is not currently a permitted use.

Ms. Abbott said that she was told that the NH Department of Environmental Services (DES) has issued an order to provide sewage disposal for camper's onsite which can be accomplished with a

conventional septic system and leach field or with a mini-sewerage treatment plant. She added that the mini-treatment plant can be constructed to service the entire camp site.

Mrs. de Beer urged the applicant to contact DES relative to the Comprehensive Shoreland Protection Act that took effect on July 1, 2008 and the site assessment that is required prior to a purchase and sale agreement. Mrs. deBeer added that the Exeter River flows into Great Bay which is a natural resource and there is an effort to protect Great Bay.

Mr. Andrew asked if the abutters had any comments. Mr. Brown said that the original paperwork for the campground says 20 campsites and now the applicant is talking about selling it as 48 sites. He stated that he is concerned that the property would have campsites near, and as close as 20' in some cases, to his property. He also voiced concerns about his privacy, noise especially late in the evening and the litter in the River. Mr. Brown added that he had previously felt he did not have a right to say anything because he purchased his property after the campground was already in, but now that the campground is no longer in operation he feels he can voice his concerns.

Mrs. Bolduc suggested that the Board issue a second comment sheet to the Town Boards and Commissions who received one for the original request for a Use Variance to Article III Section 1-D.2 and may wish to issue further comment because, while the request to re-establish a lapsed non-conforming use is the same as the original request, now the request is from different Articles and Sections of the Ordinance. Article IX Section E does not include a campground as a permitted use in the Wetland and Watershed Protection District so the request would be to allow this campground as a permitted use under the Article; and Article XVIII Section 4.1.1. requires a Conditional Use Permit by the Planning Board for commercial operations on specific roads identified on the Zoning District Map so the request to this Article would be to allow the resumption of the campground without the Conditional Use Permit and without location on a specified road. The Members agreed that another comment sheet should be issued.

With no further discussion, Mrs. Bolduc made the motion to continue this Public Hearing to 7:30 p.m. on October 28, 2008 to allow additional time for comment sheets to be sent to Town Boards and Commissions and received back from them.

Motion seconded by Mr. Boisvert with unanimous favorable vote.

CORRESPONDENCE

There was no incoming correspondence.

Next meeting: scheduled for October 28, 2008.

At 10:00 pm Mr. Downing made the motion to adjourn.

Motion seconded by Mr. Baker with unanimous favorable vote.

Respectfully submitted,

Meredith Bolduc, recording secretary
